STATE OF MICHIGAN

IN THE SUPREME COURT

ROBERT ARBUCKLE, Personal Representative of the Estate of CLIFTON M. ARBUCKLE	Supreme Court Case No. 151277
	Court of Appeals Case No. 310611
Plaintiff-Appellee,	MCAC LC #11-000043
v	BWDC Order # 031411019
GENERAL MOTORS, LLC,	
Defendant-Appellant.	

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AMICUS CURIAE BRIEF
OF THE MICHIGAN MANUFACTURERS ASSOCIATION

Cynthia M. Filipovich (P53173)
Matthew W. Heron (P61501)
Clark Hill PLC
500 Woodward Avenue, Suite 3500
Detroit, MI 48226
(313) 965-8300
Attorneys for *Amicus Curiae*
Michigan Manufacturers Association

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STATEMENT OF QUESTION PRESENTED

WHETHER DEFENDANT-APPELLANT GENERAL MOTORS, LLC'S APPLICATION FOR LEAVE TO APPEAL SHOULD BE GRANTED WHERE THE COURT OF APPEALS WRONGFULLY CONCLUDED THAT CLIFTON ARBUCKLE, AS A RETIREE, HAD NO REPRESENTATION AND THAT THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, THEREFORE, DID NOT HAVE THE AUTHORITY TO BIND PLAINTIFF TO THE 2009 AMENDMENT TO THE COLLECTIVE BARGAINING AGREEMENT, EVEN THOUGH THE COURT OF APPEALS MADE NO DETERMINATION REGARDING WHETHER ARBUCKLE'S RIGHTS UNDER THE 1990 LETTER AGREEMENT WERE VESTED, AND EVEN THOUGH ARBUCKLE'S RIGHTS UNDER THE 1990 LETTER AGREEMENT WERE NOT VESTED.

Amicus Curiae MMA answers, "Yes"

Defendant-Appellant GM answers, "Yes"

Plaintiff-Appellee answers, "No"

The Court of Appeals would answer, "No"

This Court should answer, "Yes"

STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus curiae Michigan Manufacturers Association ("*Amicus Curiae*" or "MMA") is an association of Michigan businesses, organized and existing to study matters of general interest to its members, to promote the interests of Michigan businesses and of the public in the proper administration of laws relating to its members, and otherwise to promote the general business and economic climate of the State of Michigan. Through effective representation of its membership before the legislative, executive and judicial branches of government on issues of importance to the manufacturing community, the MMA works to foster a strong and expanding manufacturing base in Michigan. A significant aspect of the MMA's activities involves representing the interests of its members before the state and federal courts, United States and Michigan legislatures, and state administrative agencies. MMA appears before this Court as a representative of approximately 2,400 private business concerns, all of which are potentially affected by the dispute currently at issue in this case.

The interests of manufacturers are coextensive with the interests of the citizens of Michigan, insofar as manufacturing is the backbone of Michigan's economy, and is an industry that has grown over the past year. Manufacturing is the largest sector of the Michigan economy generating 18% of the gross state product; it employs 563,000 Michigan residents. Since the U.S. recession ended, from June 2009 through November 2013, employment in Michigan's manufacturing sector rose by 124,600 jobs (28.4%). Manufacturing has always contributed substantially to Michigan job growth and economic output, and the promotion of a thriving manufacturing sector in Michigan is of the utmost importance to the future economic survival of this state. In fact, manufacturing accounts for 13.8% of total nonfarm employment in Michigan and 44% of nonfarm jobs added in Michigan since the recession ended have been in the

manufacturing sector. Michigan is the national leader in new manufacturing job creation since the recession ended, outpacing the next closest states by about 50%.[1]

Accordingly, the issues in this case substantially affect not only the manufacturing sector, but also the economy of the State of Michigan as a whole, and the ability of Michigan industries to compete in the regional, national, and global marketplaces.

The issue before the Court is of critical concern for Michigan manufacturers, especially those whose employees are represented by a collective bargaining unit, because it involves the legal framework within which a collective bargaining agreement is to be interpreted, and the determination of the parties' respective rights thereunder. The Court of Appeals holding that an employer is prohibited from negotiating with a union regarding non-vested retiree benefits for current retirees without the retiree's authorization, runs counter to and undermines our national labor law. This, in turn, creates significant uncertainty regarding both 1) the legal framework to be used when interpreting collective bargaining agreements, and 2) the employer's ability to rely on negotiations with the union regarding retirees' non-vested rights.

Michigan businesses must rely on a predictable body of law in order to conduct and maintain their businesses efficiently and profitably. When bad law is created that improperly requires Michigan businesses to incur liability they otherwise should not incur, such as in the instant case, it creates an unpredictable marketplace that forces businesses to increase costs and the general cost of doing business. This results in Michigan being an unattractive venue for business owners and manufacturers, thereby detrimentally affecting Michigan's economy as a whole.

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[1] See generally http://www.cnbc.com/id/100832195; CNBC, Top U.S. States for New Manufacturing Jobs, 6/25/13.

ORDER APPEALED FROM AND RELIEF SOUGHT

Amicus Curiae adopts as its own Appellant General Motors, LLC's ("GM") statement concerning the Order Appealed From and Relief Sought.

REASONS FOR GRANTING GENERAL MOTORS, LLC'S APPLICATION FOR LEAVE TO APPEAL

Pursuant to MCR 7.302(B)(3), this Court should grant GM's application for leave to appeal as "the issue involves legal principles of major significance to the state's jurisprudence;" namely, the state's willingness to adhere to binding principles of a federal common law in the interpretation of a collective bargaining agreement. The Court of Appeals' failure to recognize the correct legal framework when interpreting collective bargaining agreements is bad law as it ignores the certainty provided by a national labor law policy.

STATEMENT OF FACTS

Amicus Curiae adopts as its own the Statement of Facts set forth in GM's Application for Leave to Appeal.

STANDARD OF REVIEW

Amicus Curiae adopts as its own the Statement of Standard of Review set forth in GM's Application for Leave to Appeal.

LAW AND ARGUMENT

THE COURT OF APPEALS ERRED IN NOT APPLYING FEDERAL COMMON LAW TO DETERMINE WHETHER ARBUCKLE RETAINED A VESTED RIGHT UNDER THE 1990 LETTER OF AGREEMENT, AND FURTHER ERRED IN NOT DETERMINING THAT ARBUCKLE ASSERTED A NON-VESTED RIGHT UNDER THE 1990 CBA.

A. Plaintiff Relies on a Right Which Requires the Interpretation of a Collective Bargaining Agreement Subject to Federal Common Law.

Pivotal to this case is the fact that, although couched in terms of a claim for wrongful reduction of workers' compensation benefits, the matter actually involves the interpretation of a collective bargaining agreement (or "CBA"). This is significant because, as demonstrated below, once a court engages in the determination of rights under a CBA, it must necessarily look to federal common law. The Court of Appeals examined rights under the CBA in this case, yet it failed to look to federal common law and thus reached the wrong result. If the Court of Appeals had properly looked to federal common law, it would have necessarily recognized the distinction between a retiree's vested and non-vested rights, as well as an employer's, such as GM's, ability to freely negotiate a retiree's non-vested rights.

Plaintiff, Robert Arbuckle, as Personal Representative of the Estate of Clifton M. Arbuckle ("Plaintiff"), clearly sought an interpretation of a collective bargaining agreement in this case. Clifton M. Arbuckle ("Arbuckle") filed suit claiming that GM could not reduce his workers' compensation benefits by coordinating such benefits with disability retirement benefits, based on a right alleged to arise out of the 1990 Letter of Agreement, as incorporated into a 1990 collective bargaining agreement (the "1990 CBA") negotiated between GM and the UAW.[2] The 1990 Letter of Agreement stated that "until termination or earlier amendment of the [1990 CBA], worker's compensation for employees shall not be reduced by disability retirement benefits

[2] While the matter was pending in the Court of Appeals, Arbuckle passed away and thus his estate proceeded with the case.

payable under the [1990 Plan]." (GM's Application for Leave to Appeal, Ex. 2). He argued that "[t]he 1990 Letter Agreement between GM and the UAW, incorporated into the 1990 collective bargaining agreement, established that there would be no such coordination . . . ." (Plaintiff's Response to GM's Application for Leave to Appeal, p. 6). Indeed, the Court of Appeals clearly recognized that Plaintiff relied on the 1990 CBA, stating that "[i]t is not disputed that under the 1990 GM-UAW collective bargaining agreement, coordination of workers' compensation benefits with disability retirement was not allowed[.]" *Arbuckle v General Motors* LLC, COA No. 310611, 2015 Mich App LEXIS 215, *12 (Feb 10, 2015) (unpublished). Thus, although not expressly addressed as a matter involving the interpretation of a collective bargaining agreement, the substance of this case and, thus, the substance of the Court of Appeals' analysis, involved an interpretation of the relevant collective bargaining agreements for purposes of determining whether GM exceeded its authority.

To be sure, the interpretation of the 1990 Letter of Agreement and the 1990 CBA was a necessary aspect of Plaintiff's claim, and on appeal, the Court of Appeals, while not expressing stating so, most assuredly interpreted these papers. In fact, the Court of Appeals not only interpreted the 1990 CBA, it went so far as to find that the 1990 CBA could not be changed or amended and that, therefore, Plaintiff was entitled to rely on the 1990 Letter of Agreement's prohibition of coordination. The Court of Appeals stated:

> While it is true that the 1990 Letter of Agreement stated that coordination was prohibited "until termination or earlier amendment of the 1990 Collective Bargaining Agreement," when defendant attempted to amend the terms of plaintiff's benefit structure, plaintiff, as a retiree, had no representation. Indeed, the record contains no evidence that plaintiff authorized the UAW *to act as his representative to modify the 1990 agreement under which he retired*. . . . It is simply not tenable that a contract could be amended with respect to a particular party when that party had no representation during the amendment process. [*Arbuckle*, 2015 Mich App LEXIS 215, at *12-*13 (emphasis added).]

Simply put, when concluding that Arbuckle was not bound by the 2009 CBA's alteration of the terms of the 1990 CBA, the Court of Appeals necessarily interpreted both the 2009 CBA and the 1990 CBA. But in doing so, the Court of Appeals failed to apply federal law. Instead, in arriving at a conclusion that appears to be cut from whole cloth, the Court held that with respect to the 2009 CBA, the UAW did not have the authority to negotiate with GM regarding retirees' rights contained in the 1990 CBA on the basis that the UAW did not represent those retirees. The Court of Appeals did not cite to any legal authority in its analysis regarding the UAW's lack of authority to amend the 1990 CBA, let alone the required federal common law, except to say that such a position would be "untenable." The Court of Appeals thus ignored the basic legal framework in which such an analysis should have been conducted, and, as a result, failed to consider whether Arbuckle's rights under the 1990 Letter of Agreement were vested.

The law is clear that Section 301 of the Labor Management Relations Act ("LMRA"), 29 USC § 185, implicitly authorizes the development of a federal common law governing the interpretation of collective bargaining agreements and the preemptive scope of § 301. See *Textile Workers Union v Lincoln Mills*, 353 US 448, 451 (1957). The *Lincoln Mills'* rule serves two purposes in national labor law; namely, 1) "to grant federal courts jurisdiction over claims asserting breach of collective-bargaining agreements," and 2) "to authorize the development of federal common-law rules of decision . . . ." *Livadas v Bradshaw*, 512 US 107, 121-122 (1994).[3]

[3] *Amicus curiae* does not take a position regarding the scope of § 301 *complete* preemption as it relates to the instant matter, and does not take a position as to whether jurisdiction exists in the state court over Plaintiff's claim. Suffice it to say, however, that the principle of preemption exists so as to prevent decisions such as the one issued by the Court of Appeals, which directly contradicts established federal common law regarding the interpretation of collective bargaining agreements. See *Jones v General Motors Corp*, 939 F2d 380, 382 (CA 6, 1991) ("[F]ederal law envisions a national labor policy that would be disturbed by conflicting state interpretations of the same CBA. Pre-emption occurs when a decision on the state claim is inextricably intertwined

The law is equally as clear "an important corollary" to the *Lincoln Mills* rule is that even where a state court may take jurisdiction over a case arising from a dispute over the interpretation of collective-bargaining agreements, "*state contract law must yield to the developing federal common law, lest common terms in bargaining agreements be given different and potentially inconsistent interpretations in different jurisdictions*." *Livadas*, 512 US at 122 (emphasis added) (citing *Teamsters v Lucas Flour Co*, 369 US 95 (1962)). Accordingly, even if Plaintiff's state-law claims were not *completely* preempted by § 301 of the LMRA, any interpretation of either the 1990 CBA or the 2009 CBA must be conducted within the legal framework of the federal common law, which the Court of Appeals failed to do.

Within the legal framework of the federal common law, a union and a company may agree to bargain for retirees' benefits, and once these bargained-for benefits are vested, retired workers may have contract rights under the collective bargaining agreement which they could enforce pursuant to § 301 of the LMRA if the benefits are changed. *Allied Chemical & Alkali Workers, Local Union No 1 v Pittsburgh Plate Glass Co*, 404 US 157, 181 n 20 (1971). In other words, vested benefits in a CBA cannot be unilaterally modified without violating the LMRA. See, e.g., *Sprague v General Motors Corp*, 133 F3d 388, 399 (CA 6, 1998). Further, a union may not bargain away vested retiree benefits in favor of more compensation for active employees. *Williams v WCI Steel Co*, 170 F3d 598, 605 (CA 6, 1999). "This rule is justified by the realization that retirees, who are no longer members of the bargaining unit, have no power in subsequent negotiations, and that the agent for the union is under no statutory duty to represent them." *Allied Chem*, 404 US at 181 n 20. Thus, under these well-established legal principles, if the rights contained in the 1990 Letter of Agreement and the 1990 CBA prohibiting the

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with consideration of the terms of the labor contract and when application of state law to a dispute requires the interpretation of a collective bargaining agreement.").

coordination of benefits constitute a vested right held by Arbuckle as a retiree, then the UAW could not have negotiated with GM regarding the issue, and GM could not have used the 2009 CBA to modify vested retiree benefits contained in the 1990 CBA.

But the Court of Appeals improperly took this one step further in implicitly concluding that a union is not free to bargain away *non-vested* retiree benefits, when it failed to recognize the significant difference between vested and non-vested rights. As pointed out by GM in its Application, and as stated in *Sparks v Ryerson & Haynes, Inc*, 638 F Supp 56, 60 (ED Mich 1986), "[a] union may choose to bargain away non-vested retiree benefits in future negotiations in favor of more compensation for active employees. It cannot do so with vested benefits though." *Sparks*, 538 F Supp at 60; see also *Williams*, 170 F3d at 605. Although the Court of Appeals viewed this concept as "untenable," it nonetheless remains a significant aspect of our national labor law policy to which any state-law claim involving the interpretation of a collective bargaining agreement must adhere.

The Court of Appeals' failure to address the issue of vesting is particularly troublesome given that the issue was considered by the Michigan Compensation Appellate Commission ("MCAC"), and was aptly raised by GM before the MCAC. The MCAC's decision was issued shortly after *Garbinski v General Motors, LLC*, 2012 WL 1079924, No 11-11503 (ED Mich Mar 30, 2012) (Rosen, CJ) ("*Garbinski*") (GM's Application for Leave to Appeal, Ex. 9). In *Garbinski*, the United States District Court for the Eastern District of Michigan, applying federal common law, concluded that the same 2009 CBA at issue in the present case properly modified the rights of retirees who had retired under a prior 2003 CBA which also prohibited the coordination of disability benefits. The MCAC clearly viewed this decision as persuasive authority:

> We note on March 30, 2012, Chief Judge Gerald E. Rosen . . . specifically found that federal law preempts Michigan law concerning collective bargaining. The Court further found that the [UAW] could bargain for retired members. Finally, the same Court determined defendant did not violate MCL 418.354(1) when it coordinated benefits. All of these rulings support our disposition in this case. [GM's Application for Leave to Appeal, Ex. 8; MCAC Opinion, p. 6, n 1]

Garbinski was later affirmed by the United States Court of Appeals for the Sixth Circuit. See *Garbinski v General Motors, LLC*, 521 Fed App'x 549, 555 (CA 6, 2013) ("Thus, the district court correctly held that none of the above-cited provisions lends support to the Retirees' position that their right to uncoordinated benefits under the 2003 Letter should vest. While the above provisions may have indicated an intent to protect certain accrued benefits, they themselves do not *create* vested rights.").

The Court of Appeals in this case took no notice whatsoever of *Garbinski* or the legal principles set forth therein, despite the MCAC's reliance on the case. As a result, there now exists in the jurisprudence "conflicting . . . interpretations of the same CBA[,]" which is the very wrong the federal common law is intended to prevent. *Jones*, 939 F2d at 382.

B. Plaintiff Relies on a Non-Vested Right Which May Be Amended Through Negotiations Between GM and the UAW.

The Court of Appeals' error in not applying the federal common law to its interpretation of the 1990 CBA and 2009 CBA is compounded because under federal common law the rights sought to be enforced by Plaintiff are non-vested – a conclusion which should have been reached by the Court of Appeals if it had correctly interpreted the 2009 CBA, the 1990 CBA, and the 1990 Letter of Agreement.

As stated above, vested[4] benefits in a CBA cannot be unilaterally modified without running afoul of the LMRA. *Sprague*, 133 F3d at 399. Whether a retiree has vested rights under a CBA depends on the intent of the parties. *Price v Bd of Trustees of Indiana Laborer's Pension Fund*, 632 F3d 288, 292 (CA 6, 2011). "[B]asic rules of contract interpretation apply, meaning that the courts must first examine the CBA language to see if clear manifestations of an intent to vest are present." *Cole v ArvinMeritor, Inc*, 549 F3d 1064, 1069 (CA 6, 2008). The United States Supreme Court has recently clarified the standard within which such an analysis must be conducted:

> [A]n employer's commitment to vest such benefits is not to be inferred lightly; the intent to vest must be found in the plan documents and must be stated in clear and express language. [*M&G Polymers USA, LLC v Tackett*, __ US __; 135 S Ct 926, 937 (2015).]

Further, in *M&G Polymers*, the Supreme Court criticized any approach which inferred that a CBA which provided retirees benefits intended those benefits to vest for life in the absence of language providing for the duration of such benefits. *Id.* at 937 ("[W]hen a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life.").

The 1990 Letter of Agreement states that GM will not coordinate benefits "until termination or earlier amendment of the [1990 CBA]." Accordingly, though there is a durational component contained in the 1990 Letter of Agreement, the durational component contained in the 1990 Letter of Agreement does not provide for a lifetime benefit but instead specifically provides that such benefit would only be provided until termination or amendment of the 1990 CBA. Therefore, regardless of whether the 1990 CBA actually terminated or was itself

[4] A "vested" right is defined as "[a] right that so completely and definitively belongs to a person that it cannot be impaired or taken away without the person's consent." Black's Law Dictionary, 10th ed., p 1520.

amended, the rights provided by the 1990 Letter of Agreement regarding the prohibition on the coordination of benefits are non-vested. Accordingly, GM was free to negotiate with the UAW regarding these non-vested rights even though Arbuckle was a retiree and, therefore, not a part of the bargaining unit. See, e.g., *Sparks*, 638 F Supp at 60 ("A union may choose to bargain away non-vested retiree benefits in future negotiations in favor of more compensation for active employees.").

This is the exact analysis that was conducted in *Garbinski*, *supra*, and was relied on by the MCAC in its decision permitting GM to coordinate benefits. In *Garbinski*, the court interpreted a 2003 letter which used language identical to the language contained in the 1990 Letter of Agreement. Specifically, the 2003 letter considered in *Garbinski* stated as follows:

> Pursuant to Subsection 354(14) of the Michigan Workers Compensation Act, as amended, ***until termination or earlier amendment of the 2003 Collective Bargaining Agreement***, workers compensation for employees shall not be reduced by disability retirement benefits payable under the Hourly Rate Employees Pension Plan. [GM's Application for Leave to Appeal, Ex. 9, *Garbinski*, 2012 WL 1079924, at *1 (emphasis added)]

In rejecting the plaintiff's contention that the language contained in the 2003 Letter of Agreement created a vested right prohibiting the coordination of benefits, the court concluded that because the language used provided for the possibility of later amendment to such a right, such a right could not, as a matter of law, be considered a vested right:

> [T]he 2003 letter expressly reserves the specific right to amend the benefit coordination policy. Therefore, the express text of the agreement does not evince an intent to vest plaintiff's retirement benefits against coordination. [GM's Application for Leave to Appeal, Ex. 9, *Garbinski*, 2012 WL 1079924, at *1]

The Sixth Circuit affirmed, and likewise concluded that under federal common law, the 2003 letter, which used language identical to the 1990 Letter of Agreement at issue in this case, did not create a vested right prohibiting coordination. In its decision, the Sixth Circuit stated:

> By contrast, the 2003 Letter, which creates the right to uncoordinated workers' compensation benefits, clearly prefaces that newly-created right with a time limit: only "until termination or earlier amendment of the 2003 [CBA]." This much more closely resembles the provision in *Sprague*, where the company informed retirees of the right but in the same document informed them that the right was subject to modification. Further, this case is stronger than the facts of *Sprague*, as the clause placing limits on the right was in the very same sentence as the right it created, not just the same document. [*Garbinski*, 521 Fed App'x at 556-557, citing *Sprague*, 133 F3d at 388.]

In his Response Brief, Plaintiff does not contest the above issues. Instead, he focuses the inquiry on whether the UAW represented Arbuckle when it negotiated with GM in 2009. Plaintiff then cites *Pittsburgh Plate, supra*, and *Rossetto v Pabst Brewing Co*, 128 F3d 538, 541 (CA 7, 1997), for the proposition that a retiree is not an existing member of a collective bargaining unit. But this principle is not in contention, as GM does not claim that the UAW represented Arbuckle as of 2009. Plaintiff then attempts to extend this logic to argue that since he was not a member of the UAW at the time the UAW agreed to amend the 1990 CBA by entering into the 2009 CBA, he cannot be bound by such an amendment agreed to by the UAW. While this erroneous position was accepted by the Court of Appeals, as explained above it directly contradicts federal common law with respect to a retiree's *non-vested rights*. Plaintiff simply makes no effort to attempt to explain either why the prohibition of coordination should be considered vested (it should not), or why the UAW could not agree to amend a retiree's non-vested rights.

In summary, the 1990 Letter of Agreement created a non-vested right prohibiting the coordination of certain benefits which is the right asserted by Plaintiff in this case. Since the right asserted by Plaintiff is non-vested, GM was free to negotiate with the UAW in 2009 regarding an amendment to such right even though such an amendment would affect retirees' benefits and even though the UAW did not then represent the retirees being affected. The Court

of Appeals erred by failing to apply federal common law on this issue and by failing to adhere to our national labor law policy. This undermines a Michigan employer's ability to rely on the stability of a national labor law and the relationship between an employer and its employees' collective bargaining unit. If left to stand, the Court of Appeals' decision will mean that even as to non-vested rights, a Michigan employer will not be able to rely on a lawfully negotiated collective bargaining agreement which will, necessarily, have a negative effect on company-union bargaining and an employer's willingness to do business in Michigan.

CONCLUSION

For the above-stated reasons, the MMA respectfully requests that this Court grant General Motors, LLC's application for leave to appeal.

Respectfully submitted,

CLARK HILL PLC

By: /s/Cynthia M. Filipovich

Cynthia M. Filipovich (P53173)
Matthew W. Heron (P61501)
500 Woodward Avenue, Suite 3500
Detroit, Michigan 48226
(313) 965-8300
Attorney for *Amicus Curiae* Michigan Manufacturers Association

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